

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

Landis Allen Moragne, #302976,)	
)	Civil Action No. 1:15-1010-TMC-SVH
Plaintiff,)	
)	ORDER
vs.)	
)	
South Carolina Department of Corrections;)	
Director William Byrnes, Jr.;)	
Cecilia Reynolds, Warden of Lee)	
Correctional Institution; Ass. Warden)	
Sharp; Deputy Warden Nolan; John Doe)	
One; John Doe Two; Not None Deasi;)	
and Lt. Odom,)	
)	
Defendants.)	
)	

Plaintiff, Landis Allen Moragne, a state prisoner proceeding *pro se*, brought this action against the defendants, pursuant to 42 U.S.C. § 1983. In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02, D.S.C., all pretrial proceedings in this matter were referred to a magistrate judge. This matter is now before the court on the magistrate judge’s Report and Recommendation (“Report”), recommending that the court summarily dismiss the complaint, without prejudice and without issuance and service of process, as to South Carolina Department of Corrections (“SCDC”), Director William Byrnes, Jr., Deasi, Lt. Odom, John Doe One, and John Doe Two. (ECF No. 13.) Plaintiff has filed timely objections to the Report (ECF No. 17). This matter is now ripe for review.

The Report has no presumptive weight and the responsibility to make a final determination in this matter remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). In making that determination, the court is charged with conducting a de novo review of those portions of the Report to which either party specifically objects. *See* 28 U.S.C. §

636(b)(1). Then, the court may accept, reject, or modify the Report or recommit the matter to the magistrate judge. *See id.*

The Report recommends dismissing Defendants SCDC, Director William Byrnes, Jr., Deasi, Lt. Odom, John Doe One, and John Doe Two, for the following reasons: (1) SCDC is immune under the Eleventh Amendment; and (2) Plaintiff's complaint fails to state a claim against Defendants Byrnes, Deasi, Odom, John Doe One, and John Doe Two. In his response, Plaintiff does not specifically object to the Report, but instead he informs the court that he will file a motion to amend his complaint. (ECF No. 17). His objections, however, state that "Lt. Odom and Byrnes may be dismissed from this action." (ECF No. 17 at 3). Because Plaintiff failed to specifically object to the Report, the court adopts the Report.

Plaintiff has since filed a motion to amend his complaint—that motion was referred to the magistrate judge. (ECF No. 18). Because the Report's recommendation is based on initial review of the original complaint, the court believes that the magistrate judge should conduct an initial review of the amended complaint, if the magistrate judge grants the motion to amend the complaint. However, because Plaintiff agreed that Byrnes and Odom should be dismissed and because SCDC is still immune from suit, the court will dismiss those parties.

Accordingly, after a thorough review of the record, the court adopts that portion of the Report (ECF No. 13) which recommends dismissal of SCDC, Director William Byrnes, and Lt. Odom, and incorporates it herein. Therefore, SCDC, Director William Byrnes, and Lt. Odom are **DISMISSED** without prejudice and without issuance and service of process.¹

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

¹ The court reserves the right to review whether the remaining defendants are subject to summary dismissal after the magistrate judge conducts her initial review of the amended complaint.

June 11, 2015
Anderson, South Carolina

NOTICE OF RIGHT TO APPEAL

The parties are hereby notified of the right to appeal this order pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.